BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

ROSARIO GUTIERREZ
(Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-484
Case No. 97-00031

S.S.A. No.

Office of Appeals No. F-00452-0001

The claimant appealed from the decision of the administrative law judge which affirmed the Employment Development Department's (EDD's) determination that the claimant was not eligible for benefits under section 1253(c) of the Unemployment Insurance Code beginning September 1, 1996, and ending when the disqualifying condition no longer exists because she is not available for work.

STATEMENT OF FACTS

The claimant was last employed as an agricultural worker in February 1996.

As of September 1, 1996, and continuing through the date of the hearing before the administrative law judge, the claimant was unable to accept employment because she was caring for her child. The claimant testified that she would be unable to accept a job until her child's health improved. She further stated that once she started working, she would be able to get a reliable baby-sitter to take care of her child.

REASONS FOR DECISION

Section 1253(c) of the California Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if the claimant was "able to work and available for work for that week."

The issue raised in this appeal is whether the claimant was available for work under section 1253(c), in light of the

claimant's testimony that she was unable to accept any employment until such time as her child's health improves. In Sanchez v. Unemployment Insurance Appeals Board, (1977), 20 Cal. 3d 55, the Supreme Court of California held that availability for work within the meaning of section 1253(c) "requires no more than (1) that an individual claimant be willing to accept suitable work which he has no good cause for refusing and (2) that the claimant thereby make himself available to a substantial field of employment." Id. at 67.

In the present case, the claimant testified that EDD was correct in asserting that the claimant could not go to work because she did not have child care. When the administrative law judge asked the claimant how she would take a job, the claimant testified, "Well, once my boy gets better." Based on the claimant's uncontradicted testimony, we conclude that the claimant has completely foreclosed the possibility of accepting any employment until such time as her child's health improves.

Sanchez states "once a claimant has shown he is available for suitable work which he has no good cause for refusing, the burden of proof on the issue of whether he is available to a 'substantial field of employment' lies with the department." Id. at 71 (emphasis added). The question in this case is whether a claimant who has completely restricted his or her availability for work for reasons that would constitute "good cause" for refusal of work may yet be found ineligible for benefits in the absence of any evidence by EDD regarding the existence or non-existence of a "substantial field of employment." We answer this question in the affirmative and hold that Sanchez does not compel EDD to present evidence on an issue that is conclusively established absent such evidence.

By the clear language of Sanchez, EDD's obligation to establish the lack of a substantial field of employment arises only after the claimant has established his or her availability for some suitable work. It is important to recognize that the Sanchez case involves a claimant who placed only a partial restriction on her availability for work. Where only a partial restriction is asserted, there still exists at least the theoretical possibility that suitable work for the claimant exists. Under those circumstances benefits may be denied only where such possibility is rebutted by EDD's showing that the claimant's restriction is so broad that no substantial field of employment remains.

In contrast, the claimant in the present case has completely restricted her availability for work. Where the claimant's unrebutted testimony establishes a complete lack of availability for suitable work there is no "reasonable probability ... for obtaining suitable employment so that the willingness to work, coupled with *some* prospects of work, can result in a finding that during the weeks for which benefits are claimed, the claimant has been ready, willing, and able to accept suitable employment in a labor market where that willingness may result in gainful employment." Sanchez, supra, at 66, quoting P-B-170,(italics in original). Therefore, where it is found that the claimant is not willing to accept any suitable work, EDD need not present evidence on whether there remains a substantial field of employment to which the claimant is attached.

Under these circumstances we find that the claimant is not available for work under section 1253(c). When the claimant's son's health improves enough for her to reenter the workplace, the claimant should contact EDD to reopen her claim and notify EDD that the disqualifying condition no longer exists.

DECISION

The decision of the administrative law judge is affirmed. Benefits are denied from September 1, 1996, and ending when the disqualifying condition no longer exists.

Sacramento, California, August 5, 1997.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

LOUIS WM. BARNETT, Chairman

INGRID C. AZVEDO

GEORGE E. MEESE

JAMES S. STOCKDALE

DISSENTING - Written Opinion Attached

PHILIP S. RYAN

DAVID A. ROBERTI

ROBERT P. MARTINEZ

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Dissenting Opinion

I respectfully dissent.

In Sanchez v. Unemployment Insurance Appeals Board, (1977) 20 Cal.3d. 55, 68, the California Supreme Court declared it to be legal error to hold that a "claimant could be declared `unavailable' without a prior inquiry into whether the evidence established that she had `good cause' to refuse []work...." By declaring the claimant in this case unavailable, the majority commits the same legal error in this case as was condemned in Sanchez. The claimant certainly restricted her availabilityy stating that she could and would accept offers of suitable employment as soon as her ill son got better. However, only the most cursory inquiry was made into the nature and duration of the claimant's son's illness. Thus, the record is completely bereft of any evidence indicating the nature and extent of the claimant's restriction. The majority is left to declare, based on an extremely scanty record, that the claimant is wholly unavailable without any insight into whether `good cause' for the claimant's restriction existed or whether the claimant refused to entertain any alternative means of caring for her son.

I would remand this case back to the ALJ for a hearing that would establish clearly the claimant's ability to accept immediate employment. If the claimant has placed restrictions on her availability, the nature and duration of the restriction must be in the record. Absent such information, the Board does not have the information required by Sanchez to find the claimant unavailable.

PHILIP S. RYAN

DAVID A. ROBERTI (Concurring)

ROBERT P. MARTINEZ (Concurring)